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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,505	03/23/2007	Peter G. Selen	59076US009	7399
32692 7590 11/13/2009 3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427				
EXAMINER HUANG, CHENG YUAN				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/596,505

Applicant(s)

SELEN ET AL.

Examiner

CHENG HUANG

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2009.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-22 and 24-28 is/are pending in the application.
4a) Of the above claim(s) 1-8, 21, 22 and 24-28 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 10-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date 07/27/2009, 09/06/2006
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because it exceeds 150 words. Correction is required. See MPEP § 608.01(b).

Election/Restrictions

2. Applicant's election with traverse of Group II, claims 10-18, in the reply filed on 9/2/09 is acknowledged. The traversal is on the ground(s) that the prior art does not teach the feature shared by groups I, II, III, and IV of the proximal and distal end portions of the closure tape tab being either separated or separable pieces each connected to a major surface of the inner tab portion as noted in Examiner's Restriction Requirement filed 05 August 2009. Examiner notes that the claimed limitation does not include the recitation of [the proximal and distal end portions of the closure tape tab] being either separated or separable pieces. The claim as stated teaches the commonly shared special technical feature of a closure tape tab comprising proximal end and distal end portions which are connected by an inner tab portion on which the first major surface is provided with an anti-adhesive means, which is taught by the prior art of Ness et al., as disclosed in the Restriction Requirement.

3. Applicant also argues that group II, claims 10-20 and group IV, claims 24-28 share the feature of the proximal end portion being connected to said inner tab portion at said second major surface thereof such that said proximal end portion extends over at least a substantial portion of said inner tab portion, and said distal end portion being connected to said inner tab

portion at said first major surface thereof such that at least a portion thereof remains exposed, wherein an anti-adhesive means is provided at least at a part of said exposed portion of the first major surface of the inner tab portion. While groups II and IV share this recited feature, since this limitation is not shared by groups I, II, III, and IV, it is not a commonly shared special technical feature and therefore is not required that this specific limitation make a contribution over the prior art.

The requirement is still deemed proper and is therefore made FINAL.

4. Claims 1-9 and 21-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 02 September 2009.
5. Given Applicant's amendments to claims 19 and 20, claims 19 and 20 will be joined with group II and examined as set forth below.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 11, 15, and 17-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. The term "substantially" in claim 11 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard

for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The extent to which the anti-adhesive means extends over the exposed portion of the inner tab is rendered indefinite by the use of the term "substantially". For the purpose of examination, the term "substantially" is considered to be met as long as the anti-adhesive means is present on the inner tab.

9. Claim 15 recites the limitation "said intermediate part". There is insufficient antecedent basis for this limitation in the claim.

10. Claim 17 is unclear by the use of the term "integrally" given that it is not clear if the claimed limitation may be considered as the anti-adhesive means being a part of the distal end portion as one continuous structure or as the anti-adhesive means being a portion directed connected to the distal end portion.

11. Claim 18 recites the limitation "the proximal end of said distal end portion". There is insufficient antecedent basis for this limitation in the claim.

12. Claim 18 is unclear as to where the line of weakness is in the closure tape tab given that the claim recites "the distal end of the anti-adhesive means" where the distal end of the anti-adhesive means is written to appear different from the distal end of the closure tape tab and "the proximal end of said distal end portion" where the proximal end of said distal end portion is unclear since it lacks antecedent basis. The location of the line of weakness as claimed is unclear even though the limitation is described in the Specifications and Fig. 17. For the purpose of examination, the line of weakness is considered to be provided between the distal end and the proximal end of the closure tape tab.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 10-14 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Tritsch (U.S. Patent No. 3,930,503).

15. Regarding claim 10, Tritsch teaches a closure tape tab for an absorbent article (See Abstract), for fastening of the article on the body of a person (col. 2, lines 10), comprising a proximal end portion (terminal end 15, pressure sensitive adhesive layer 15, col. 2, line 66, Fig. 2, col. 2, line 42) and a distal end portion (terminal end 16, col. 2, line 43, Fig. 2) being connected by an inner tab portion (central segment 17, col. 2, lines 43-45), said inner tab portion having a first major surface (lower surface, Fig. 2) and an opposite second major surface (upper surface, Fig. 2), wherein said proximal end portion is connected to said inner tab portion at said second major surface thereof such that said proximal end portion extends over at least a substantial portion of said inner tab portion (pressure sensitive adhesive layer 15, Fig. 2), and said distal end portion is connected to said inner tab portion at said first major surface thereof such that at least a portion thereof remains exposed (Fig. 2), and wherein an anti-adhesive means is provided at least at a part of said exposed portion of the first major surface of the inner tab portion (release surface 25, col. 2, line 63).

16. Regarding the claimed limitations "for an absorbent article, for fastening of the article on the body of a person" applicants attention is drawn to MPEP 2111.02 which states that "if the

body of a claim fully and intrinsically sets forth all the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction". Further, MPEP 2111.02 states that statements in the preamble reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the purpose or intended use results in a structural difference between the claimed invention and the prior art. Only if such structural difference exists, does the recitation serve to limit the claim. If the prior art structure is capable of performing the intended use, then it meets the claim.

17. It is the examiner's position that the preamble does not state any distinct definition of any of the claimed invention's limitations and further that the purpose or intended use, i.e. for an absorbent article, for fastening of the article on the body of a person, recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art closure tape tab and further that the prior art structure which is a closure tape tab identical to that set forth in the present claims is capable of performing the recited purpose or intended use.

Furthermore, the claimed limitations are taught by the prior art as disclosed above.

18. Regarding claim 11, in light of the 35 U.S.C. 112, second paragraph rejection as addressed above, Tritsch teaches wherein said anti-adhesive means extends over substantially the entire length of said exposed portion of said inner tab portion (Fig. 3).

19. Regarding claims 12 and 13, Tritsch teaches wherein said anti-adhesive means is an anti-adhesive paper, an anti-adhesive film, a cover strip or a liner, or an anti-adhesive coating (col. 4,

lines 30-34) where an anti-adhesive film is considered to be an anti-adhesive coating, and a cover strip or liner is considered to be the release paper taught by Tritsch.

20. Regarding claim 14, Tritsch teaches wherein said inner tab portion comprises an elastic (col. 3, lines 18-22).

21. Regarding claim 16, Tritsch teaches wherein an adhesive is provided on the distal end portion (pressure-sensitive adhesive 26, col. 2, line 66, Fig. 3) given that the adhesive is on the distal end portion as depicted in Fig. 3.

22. Regarding claim 17, in light of the 35 U.S.C. 112, second paragraph rejection as addressed above, Tritsch teaches wherein the anti-adhesive means is provided integrally with said distal end portion and is removable from the closure tape tab so as to expose the first major surface of said inner tab portion (release surface 25, Fig. 3).

23. Claims 15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Tritsch (U.S. Patent No. 3,930,503) in view of Richman et al. (U.S. Patent No. 4,020,842).

24. Regarding claim 10, Tritsch teaches a closure tape tab for an absorbent article (See Abstract), for fastening of the article on the body of a person (col. 2, lines 10), comprising a proximal end portion (terminal end 16, backing sheet 21, and facing sheet 23, col. 2, lines 43, 59-60, Fig. 2) and a distal end portion (terminal end 15, col. 2, line 42) being connected by an inner tab portion (central segment 17, col. 2, lines 43-45), said inner tab portion having a first major surface (lower surface, Fig. 2) and an opposite second major surface (upper surface, Fig. 2), wherein said proximal end portion is connected to said inner tab portion at said second major surface thereof such that said proximal end portion extends over at least a substantial portion of

said inner tab portion (pressure sensitive adhesive layer 15, Fig. 2), and said distal end portion is connected to said inner tab portion at said first major surface thereof such that at least a portion thereof remains exposed (Fig. 2), and wherein an anti-adhesive means is provided at least at a part of said exposed portion of the first major surface of the inner tab portion (release surface 25, col. 2, line 63).

25. Regarding claim 15, Tritsch teaches wherein said proximal end portion is comprised of a nonwoven material (col. 3, lines 65-66).

26. Tritsch fails to teach the distal end portion being comprised of a nonwoven material.

27. However, Richman et al. teaches a closure tape tab (reclosable tab stock, See Abstract) wherein said proximal and distal end portions are comprised of a nonwoven material (left and right sides of Fig. 3, diaper portions 27 and 28, col. 3, lines 56 and 67).

28. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a nonwoven material for both the proximal and distal end portions of Tritsch for softness.

29. Regarding claim 18, Tritsch fails to teach a line of weakness.

30. However, Richman et al. teaches wherein a line of weakness is provided between the distal end and the proximal end of the closure tape tab (slit 18, col. 3, line 8, Figs. 1 and 3).

31. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a line of weakness between the distal end and the proximal end portions of the closure tape tab of Tritsch to control the limitation of peel-back (Richman et al., col. 4, lines 10-19).

32. Claims 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Tritsch (U.S. Patent No. 3,930,503) and/or in view of Richman et al. (U.S. Patent No. 4,020,842) in view of Loescher (WO 2004/075803).

33. Tritsch and Tritsch as modified by Richman et al. is relied upon as disclosed above.

34. Regarding claim 19, Tritsch and Tritsch as modified by Richman et al. fails to teach a stable roll of laminated closure tape.

35. However, Loescher teaches a stable roll of laminated closure tape (page 6, lines 18-19, Abstract).

36. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide closure tape tab of Tritsch in the form of a stable roll for continuous unwinding of the roll at high speeds.

37. The recitation "laminated" is a process limitation. It is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113. Furthermore, the limitation is taught by Loescher (See Abstract).

38. The recitation "...can be cut" is a statement of intended use and does not impart structural limitations upon the claimed invention. The recitation does not limit the scope of the claim since the resulting structure of the claimed invention encompasses that of the device taught by Lipper, as shown above. MPEP 2111.02.

39. Regarding claim 20, Tritsch and Tritsch as modified by Richman et al. fails to teach wherein stable roll of prelaminated closure tape is levelwound.

40. However, Loescher teaches wherein the stable roll of prelaminated closure tape is levelwound (page 6, lines 19-20, Abstract).

41. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a stable roll that is levelwound to increase storage capacity.

42. The recitation "prelaminated" is a process limitation. It is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

43. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

44. Claims 10-16, and 19-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Loescher (WO 2004/075803).

45. Regarding claim 10, Loescher teaches a closure tape tab (elastic laminate fastening tab, Abstract) for an absorbent article, for fastening of the article on the body of a person (page 1, lines 5-7), comprising a proximal end portion (right portion of closure element 8, page 7, line 13) and a distal end portion (left portion of closure element 6, page 7, line 13) being connected by an inner tab portion (middle portion of elastic laminate fastening tab 2, blanking film portion 30, elastic element 18, page 7, line 32, page 8, line 2, Fig. 2), said inner tab portion having a first major surface (upper surface of elastic laminate fastening tab 2, fig. 2) and an opposite second major surface (lower surface of elastic laminate fastening tab 2, fig. 2), wherein said proximal end portion is connected to said inner tab portion at said second major surface thereof such that said proximal end portion extends over at least a substantial portion of said inner tab portion (blanking film portion 30, Fig. 2), and said distal end portion is connected to said inner tab portion at said first major surface thereof such that at least a portion thereof remains exposed (See Fig. 2), and wherein an anti-adhesive means (blanking film portion 28, page 8, line 2) is provided at least at a part of said exposed portion of the first major surface of the inner tab portion (See Fig. 2).

46. Regarding claim 11, in light of the 35 U.S.C. 112, second paragraph rejection as addressed above, Loescher teaches wherein said anti-adhesive means extends over substantially the entire length of said exposed portion of said inner tab portion (blanking film portion 28, page 8, line 2, Fig. 2).

47. Regarding claims 12 and 13, Loescher teaches wherein said anti-adhesive means is an anti-adhesive paper, an anti-adhesive film, a cover strip or a liner, or an anti-adhesive coating (page 8, lines 2-9) where an anti-adhesive film taught by Loescher is considered to be an anti-adhesive coating.

48. Regarding claim 14, Loescher teaches wherein said inner tab portion comprises an elastic (Page 11, lines 13-15).

49. Regarding claim 15, Loescher teaches wherein said proximal and distal end portions are comprised of a nonwoven material (page 10, lines 10-14).

50. Regarding claim 16, Loescher teaches wherein an adhesive and a fingerlift are provided on the distal end portion (pressure sensitive adhesive 20, page 7, line 27, finger lift element 32, page 9, line 7).

51. Regarding claim 19, Loescher teaches a stable roll of laminated closure tape (page 6, lines 18-19, Abstract).

52. Regarding claim 20, Loescher teaches wherein the stable roll of prelaminated closure tape is levelwound (page 6, lines 19-20, Abstract).

Conclusion

53. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHENG YUAN HUANG whose telephone number is (571) 270-7387. The examiner can normally be reached on Monday-Thursday from 8 AM to 4 PM.
54. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho, can be reached at 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
55. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. H./

Cheng Yuan Huang

Examiner, Art Unit 1794

November 5, 2009

/Callie E. Shosho/

Supervisory Patent Examiner, Art Unit 1794